

**REMARKS**

Please reconsider the application in view of the above amendments and the following remarks. Applicants thank the Examiner for indicating that claims 14, 25, 26, and 41 are allowed, for indicating that claims 1, 12, 13, and 40 would be allowable once the rejection under 35 U.S.C. § 101 is overcome, for indicating that claims 27, 38, 39, and 42 would be allowable once the objection is overcome, for initialing the information disclosure statements filed on February 8, 2007 and October 1, 2008, and for carefully considering this application.

**Disposition of the Claims**

Claims 1, 12-14, 25-27, 38-42 are currently pending in this application. Of the currently pending claims, claims 1, 14, and 27 are independent. The remaining claims depend, directly or indirectly, from claims 1, 14, and 27.

**Amendment to the Specification**

The Specification is amended by way of this reply to recite that computer readable medium may be “computer readable storage medium” or “transmission medium,” where computer readable storage medium includes non-volatile and volatile media. Support may be found, for example, in paragraph [0059] of the Application as filed. Applicants respectfully assert, and as stated by the Examiner in a phone conversation on September 21, 2010, that no new subject matter is added by way of these amendments.

**Claim Amendments**

Claim 1 is amended by way of this reply to clarify aspects of the invention. Support for the amendment may be found in paragraph [0065]. Further, claims 1, 13, 14, 27, and 39 are amended to correct antecedent basis in the claims. No new subject matter is added by way of these amendments.

**Objection to the Claims/Specification**

The Specification and claims 27, 38, 39, and 42 stand objected to for failing to provide proper antecedent basis in the Specification for the claimed subject matter in claims 27, 38, 39, and 42. Specifically, the Examiner asserts that the Specification fails to provide support for “computer readable storage medium” and “computer storage readable medium” in claims 27, 38, 39, and 42. As discussed with the Examiner on September 21, 2010, the claims and the Specification are amended to recite “computer readable storage medium.” Accordingly, withdrawal of this objection is respectfully requested.

**Rejection under 35 U.S.C. § 101**

Claims 1, 12, 13, and 40 stand rejected under 35 U.S.C. § 101 as being directed to non-statutory subject matter. To the extent that this rejection applies to the amended claims, this rejection is respectfully traversed.

Under 35 U.S.C. § 101, “[w]hoever invents or discovers any new and useful process, machine, manufacture, or composition of matter, or any new and useful improvement thereof, may

obtain a patent therefor, subject to the conditions and requirements of this title.” (emphasis added). The court in *Bilski* clarified that one, non-exclusive test for determining whether a process is patentable is (1) it is tied to a particular machine or apparatus, or (2) it transforms a particular article into a different state or thing. See, *Bilski v. Kappos*, 561 U.S. \_\_\_\_ (2010) citing *In re Bilski*, 545 F.3d 943 (Fed. Cir. 2008) (en banc).

The Interim Instructions for Evaluating Subject Matter Eligibility under 35 U.S.C. § 101 dated August 2009<sup>1</sup> stated, “[f]or computer implemented processes, the “machine” is often disclosed as a general purpose computer. In these cases, the general purpose computer may be sufficiently “particular” when programmed to perform the process steps. Such programming creates a new machine because a general purpose computer, in effect, becomes a special purpose computer once it is programmed to perform particular functions pursuant to instructions from program software.” Interim Instructions, p. 8.

Amended independent claim 1 recites, in part, that the software GEC executes on a computer processor. Therefore, amended independent claim 1 is tied to a particular machine. Accordingly, for at least the reasons mentioned above, amended claim 1 satisfies 35 U.S.C. § 101. Dependent claims 12, 13 and 40, which depend, directly or indirectly, from amended claim 1, satisfy 35 U.S.C. § 101 for at least the same reasons. Withdrawal of this rejection is respectfully requested.

---

<sup>1</sup> The Interim Guidance Interim Guidance for Determining Subject Matter Eligibility for Process Claims in view of *Bilski v. Kappos*, No. 08-964 (June 28, 2010) (Interim Guidance) stated that it was only a supplement to the Interim Instructions. Accordingly, both the Interim Guidance and the Interim Instructions provide current guidance of the USPTO.

### **Conclusion**

Applicants believe this reply is fully responsive to all outstanding issues and places this application in condition for allowance. If this belief is incorrect, or other issues arise, the Examiner is encouraged to contact the undersigned or his associates at the telephone number listed below. Please apply any charges not covered, or any credits, to Deposit Account 50-0591 (Reference Number 33227/458001).

Dated: October 20, 2010

Respectfully submitted,

By /Robert P. Lord/  
Robert P. Lord  
Registration No.: 46,479  
OSHA · LIANG LLP  
909 Fannin Street, Suite 3500  
Houston, Texas 77010  
(713) 228-8600  
(713) 228-8778 (Fax)  
*Attorney for Applicants*